IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5-02-2002

CORAM:

THE HON'BLE MR. JUSTICE K. SAMPATH

S.A.No.1671 of 1989 and C.M.P.No.15909 of 1989

Subbaraya Mudaliar ...
Appellant

Vs.

1. Vendamirdhammal
2. Venkatesan
3. Kuppammal
4. Sarasu
5. Pavunambal ...
Respondents

For Appellant: ... Mr.A.K. Kumaraswamy
For Respondents: ... Mr.K. Chandrasekaran

This second appeal is filed against the judgment and decree dated 5 -4-1989 made in A.S.No.207/88 on the file of the learned District Judge, South Arcot at Cuddalore.

: JUDGMENT: The plaintiff in O.S.No.1/87 on the file of the Subordinate Judge' s Court, Tindivanam, is the appellant in the second appeal. He filed the suit for recovery of money due against the respondents herein, who are the legal representatives of one Kannu Pillai alleging that the said Kannu Pillai borrowed a sum of Rs.9000/- from him on 27.1.1983 and another sum of Rs.7,500/- on 11.1.1984 and executed promissory notes in respect of the said borrowings agreeing to repay the sums with interest at 12% p.a., on demand, that Kannu Pillai died leaving behind the respondents as his legal representatives to succeed to his estate, that they were in possession and enjoyment of his properties, that they were therefore liable to discharge the suit claims out of the properties of Kannu Pillai and in their hands, that he requested Kannu Pillai during his life time and after his death, the respondents herein to pay the amounts due, that they had been postponing the same on false pretext, that he caused a notice to be issued on 20-12-1985 through his

Counsel to the respondents and that even thereafter, they had not paid the amount necessitating the filing of the suit for recovery of a total amount of Rs.20,917.50.

2. The respondents resisted the suit disputing the execution of the two promissory notes by Kannu Pillai, that in the copy of the plaint in one place it was stated that the promissory notes had been executed on the same date and in another place it was stated that they were executed on different dates, that this by itself would show that the promissory notes were not true documents, but created by the plaintiff as would be evident from the fact that Kannu Pillai died on 19.9.1 983, that in respect of his obsequies, printed notice had been circulated in the village, that with a view to grab the properties of Kannu Pillai, the plaintiff had created the promissory notes, that it was false to say that during the life time of Kannu Pillai, the plaintiff demanded return of the amounts due under the promissory notes, that no demand had been made by the defendants either, that no notice had been issued and that the suit was liable to be dismissed with exemplary costs.

3. On the pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence, held that the suit promissory notes were not true, that the plaintiff had not established that they were executed by Kannu Pillai and that therefore, the defendants were not liable for the suit claim. By judgment and decree dated 2 3.9.1988 the trial Court dismissed the suit. This was confirmed in the appeal A.S.No.207/88 by the learned Principal District Judge, Cuddalore, by judgment and decree dated 5.4.1989. It is as against that, the present second appeal has been filed.

4. At the time of admission, the following substantial question of law was raised: "Whether on the basis of the additional evidence sought to be produced, the findings of both the Courts below are vitiated? (Refer: KUMARASWAMY GOUNDER VS. NANJAPPA GOUNDER (1977 TLNJ 375)")

5. While framing the substantial question of law, the learned Judge has stated as follows:

"The plaintiff, who lost in both the Courts below, is the appellant. The suit was based on a promissory note alleged to have been executed by one Kannu Pillai, husband of the first respondent and father of respondents 2 to 5. Both the Courts below considered the question on two main aspects. One was the date of the death of Kannu Pillai and the possibility of the promissory note having been executed by Kannu Pillai was alleged. The second aspect was whether Kannu Pillai was a signatory or a person used to affixing his thumb impression. On the first question it was held that due to divergent evidence it was not

possible to arrive at a definite conclusion about the date of death of Kannu Pillai. Basing on certain documents, in respect of the second question, it was held by the Courts below that Kannu Pillai was a signatory and was not used to affixing his thumb impression. In the additional evidence sought to be placed before this Court, by way of two documents, one is a sale deed executed by Kannu Pillai dated 9.1 2.1960 where he appears to have affixed his thumb impression. The second document is a suit register extract of 1973 in respect of previous transactions between Kannu Pillai and the appellant, to dislodge certain observations made by the Appellate Court. In view of the fact that the whole dispute in the suit revolves on the question of Kannu Pillai being a signatory or a person who was used to affixing his thumb impression, the second appeal has to be admitted on the basis of the additional evidence sought to be let in."

6. The learned Counsel for the appellant submits that the defendants had come forward with a definite case that Kannu Pillai died in September, 1983, that the suit promissory notes alleged to have been executed in December, 1983 and January, 1984 could not have been executed by Kannu Pillai, and that it was incumbent on them to have satisfied the Court that Kannu Pillai died long prior to the alleged execution of the promissory notes. In this connection, the learned Counsel pointed out that the defendants sought to prove the time of death of Kannu Pillai by producing a document before the lower Appellate Court. This document purported to be the printed obsequies notice and the lower Appellate Court had rejected the application for reception of the notice, that it would mean that the defendants had not established that Kannu Pillai died in September, 1983. The learned Counsel drew my attention to the admission made by the first defendant as D.W.1, that no printed obsequies invitation was issued. Before the lower Appellate Court, the appellant herein sought to file a communication from the Tahsildar stating that the death of Kannu Pillai had not been registered. The application filed by the appellant was also dismissed by the lower Appellate Court stating that the document sought to be produced would not prove anything in favour of the plaintiff.

7. Before this Court, the plaintiff has taken out an application for reception of a document of the year 1960 executed by late Kannu Pillai. This is done to discredit the case of the defendants that Kannu Pillai was never in the habit of affixing his thumb impression to documents executed by him and that he only signed documents. To disprove the said stand, the document of the year 1960 has been produced. Another document which is sought to be produced is the suit register extract of the year 1973 in respect of the previous transaction between Kannu Pillai and the appellant.

8. Let us assume that Kannu Pillai was in the habit of both affixing his thumb impression and putting his signature in the documents. But then it was incumbent on the plaintiff to satisfy the Court that Kannu Pillai indeed borrowed those amounts. As pointed out by the Courts below, it appears strange that within sixteen days of his alleged borrowing under Ex.A-1 of Rs.9000/-, Kannu Pillai had borrowed a further sum of Rs.7,500/-, that absolutely no material had been produced by the plaintiff to show that he needed so much money and that it was very unlikely that the plaintiff advanced such large amounts without taking any security from Kannu Pillai. The lower Appellate Court had commented on the fact that no material had been produced by the plaintiff to show that there were prior proceedings between Kannu Pillai and the plaintiff and that the plaintiff had obtained decrees against Kannu Pillai. Only to remove the observations made by the Appellate Judge the suit register extract is sought to be filed.

9. The Courts below chose not to accept the evidence on the side of the plaintiff in support of his stand that amounts were advanced on two different dates to Kannu Pillai. The scribe Munuswamy has not been examined. No doubt, in Ex.A-9 dated 15.12.1986 which is a sale deed executed by defendants 1 and 2 in favour of one Jagadeesan, there is a reference to the debt due to the plaintiff. The Courts below have rightly held that particulars regarding debt due to the plaintiff have not been given in the sale deed and the sale deed by itself cannot prove the execution of the suit promissory notes. The plaintiff in his oral evidence has accepted that he had obtained a decree against Kannu Pillai. In fact one of the documents sought to be produced before this court is a suit register extract. Apparently, the reference is to that decree debt. It will be hazardous to hold merely on the basis of the recital in Ex.A-9 that the suit promissory notes had been proved to have been executed by Kannu Pillai in favour of the plaintiff, particularly when there is no conclusive proof about the time of death of Kannu Pillai. It should also be noted that the plaintiff had waited for nearly three years after the alleged coming into existence of the suit promissory notes for filing the present suit. The Courts below have concurrently held that the plaintiff had not proved that the suit promissory notes were executed by deceased Kannu Pillai.

10. Consequently, the substantial question of law is answered against the appellant. The civil miscellaneous petition for permitting the appellant/petitioner to produce additional evidence is dismissed. The second appeal fails and the same is dismissed. There will be no order as to costs.

05-02-2002 Index: Yes/No IGP

To
1. The Principal District Judge,
Cuddalore (with records).
2. The Subordinate Judge, Tindivanam.
3. The Record Keeper,
V.R. Section,
High Court,
Madras.

K. SAMPATH, J.

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and
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